



OHIO ETHICS COMMISSION

THE ATLAS BUILDING
8 EAST LONG STREET, SUITE 210
COLUMBUS, OHIO 43215
(614) 466-7090

Advisory Opinion Number 85-007
July 24, 1985

Syllabus by the Commission:

(1) A county treasurer is not, per se, prohibited from serving on the board of directors of a bank that is a depository of county funds, because Sections 135.11 and 135.38 of the Revised Code, part of the Uniform Depository Act, provide an exemption from the prohibition of Division (A)(4) of Section 2921.42 of the Revised Code.

(2) Division (D) of Section 102.03 of the Revised Code prohibits a county treasurer from participating in a decision or authorizing a transaction involving the bank if he has a personal, financial stake in the decision or transaction.

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You asked whether the Ohio Ethics Law and related statutes would prohibit a county treasurer from serving on the board of directors of a bank that is a depository of county funds.

Division (A)(4) of Section 2921.42 of the Revised Code provides:

(A) No public official shall knowingly do any of the following:

...

(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which he is connected.

A county treasurer is a "public official" as defined in Division (A) of Section 2921.01 of the Revised Code because he is an elected officer of a political subdivision of the state. The deposit of county funds in a bank serving as a public depository is a "public contract" as defined in Division (E)(1) of Section 2921.42 of the Revised Code (See: Ohio Ethics Commission Advisory Opinion No. 83-003). An officer or board member of a corporation is interested in contracts with his firm (See: Advisory Opinions No. 81-003, 81-005, and 81-008). In Advisory Opinion No. 83-003, the Commission held that Division (A)(4) of Section 2921.42 of the Revised Code prohibits the chief financial officer of a state university from serving on the board of directors of a bank that is a depository of university funds. Similarly, a county treasurer would have a prohibited interest in a public contract if he served on the board of a bank that is a depository of county funds.

However, the Uniform Depository Act, Chapter 135. of the Revised Code, includes an exemption that appears applicable to Division (A)(4) of Section 2921.42 of the Revised Code. Although this exemption was not available to the university fiscal officer in Advisory Opinion No. 83-003, it is available to a county officer. Section 135.38 of the Revised Code provides:

An officer, director, stockholder, employee, or owner of any interest in a public depository receiving public deposits pursuant to sections 135.31 to 135.40 of the Revised Code shall not be deemed to be interested, either directly or indirectly, as a result of such relationship, in the deposit of such public moneys for the purpose of any law of this state prohibiting an officer of any county from being interested in any contract of the county.

In addition, a general exemption, applicable to officers of the state and its political subdivisions, appears in Section 135.11 of the Revised Code. Thus, Ohio Attorney General Opinion No. 65-137 held that a board of county commissioners may legally enter into a depository contract for active or inactive funds with a bank having as a stockholder and director one of the county commissioners, provided the requirements of Chapter 135. of the Revised Code, which establishes procedures for the deposit of public funds, are met. Consequently, a county treasurer is not prohibited from serving as a board member of a bank that is a depository of county funds, provided the requirements of Chapter 135. of the Revised Code are met.

Sections 135.11 and 135.38 of the Revised Code do not provide an exemption from the Ohio Ethics Law, Chapter 102. of the Revised Code. Specifically, Division (D) of Section 102.03 of the Revised Code provides the following:

No public official or employee shall use or attempt to use his official position to secure anything of value for himself that would not ordinarily accrue to him in the performance of his official duties, which thing is of such character as to manifest a substantial and improper influence upon him with respect to his duties.

A county treasurer is a "public official or employee" as defined in Division (B) of Section 102.01 of the Revised Code because he is elected to an office of the county. Thus, the county treasurer would be prohibited from using his official position for personal gain or benefit. The application of this provision would be dependent upon the facts and circumstances of the particular case, but it should be considered when the county treasurer makes decisions affecting the bank, particularly if he receives director's fees or owns stock. A county treasurer has considerable discretion pursuant to Chapter 135. of the Revised Code to deposit or invest active or inactive county funds. If he has a personal, financial stake in the outcome of a particular decision or transaction concerning the bank, Division (D) of Section 102.03 of the Revised Code would prohibit him from participating in the decision or authorizing the transaction.

In addition, it would create the appearance of impropriety for a county treasurer to serve on the board of a bank that is a depository of county funds, since it would appear that he would be more favorably disposed to his bank than to its competitors within the county. Although the General Assembly established the exemption to permit board members, officers, shareholders, and employees of banks to serve as public officials or employees, the Commission believes that

the exemption sweeps too broadly when it permits such interested parties to serve in public positions with significant discretion in the deposit or investment of public funds.

The conclusions of this opinion are based on the facts presented, and are limited to questions arising under Chapter 102. and Section 2921.42 of the Revised Code.

Therefore, it is the opinion of the Commission, and you are so advised, that: (1) a county treasurer is not, per se, prohibited from serving on the board of directors of a bank that is a depository of county funds, because Sections 135.11 and 135.38 of the Revised Code, part of the Uniform Depository Act, provide an exemption from the prohibition of Division (A)(4) of Section 2921.42 of the Revised Code; and (2) Division (D) of Section 102.03 of the Revised Code prohibits a county treasurer from participating in a decision or authorizing a transaction involving the bank if he has a personal, financial stake in the decision or transaction.


Robert Y. Farrington, Chairman
OHIO ETHICS COMMISSION